The Law of California Co-Operative Marketing Associations

(CONCLUDED FROM SEPTEMBER ISSUE)

AS AFFECTING the remedy of specific performance there remain to be considered only two questions: First: Does the nature of the contract require a decree calling for continuous acts such as a court of equity refuses to enforce? Second: Does the provision in the contract for liquidated damages afford an adequate remedy at law?

Continuous Acts

If the producer is required specifically to perform the produce sale agreement, his course of conduct for a period of several months is directed by the court.[143] It may be contended that this precludes specific performance on the ground that a "A court will not undertake to frame a decree of specific performance where it involves continuous and long series of acts of supervision requiring special knowledge and skill and repeated examinations and new directions."[144]

This contention was raised in Texas Company v. Central Fuel Oil Company.[145] Plaintiff in that case operated an oil pipe line and several refineries. It had entered into a contract with defend-

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[143] The contract includes all eggs produced or acquired by the seller in 1920. Par. 9 of the contract provides: "This agreement shall continue in full force and effect and throughout each of the years 1921, 1922 and 1923, respectively, unless the Seller by written notice sent by registered mail to the Buyer between October 1st and October 15th of any year beginning with 1920, terminates this agreement as to such Seller, as of December 31st of that year." The maximum period for which specific performance could be sought would therefore be one year.

[144] Stanton v. Singleton (1899) 126 Cal. 657, 59 Pac. 146, 47 L. R. A. 334. This case first laid down the rule in California. It involved a contract for the erection of a stamp mill and the opening and developing of a quartz mine. The rule was not necessary for the decision of the case, as the court had decided that there was no mutuality of obligation in the contract (one party was not bound to do anything) and had held the contract too uncertain for specific performance. The question was again raised in Moore v. Ruohy (1904) 142 Cal. 342, 75 Pac. 896. The contract in this case was for the reclaiming and preparing of land for the growth of citrus trees, but as in the preceding case it was too uncertain and indefinite to be specifically enforced. Pacific Electric Ry. Co. v. Campbell-Johnston (1908) 153 Cal. 106, 94 Pac. 623, involved a contract to build and operate a railroad. No question of uncertainty was raised in this case, and the court definitely decided that performance of such a contract could not be specifically enforced. The rule was repeated in Crane v. Roach (1916) 29 Cal. App. 584, 587, 156 Pac. 375, and was referred to in Magee v. Magee (1917) 174 Cal. 276, 281, 162 Pac. 1023.

[145] (1912) 194 Fed. 1, 114 C. C. A. 21.

ant by which plaintiff agreed to extend its pipe line to defendant's oil fields and to build a connection with defendant's wells. Defendant agreed to run all its oil into this line for ten years, plaintiff agreeing to purchase the oil for a stipulated sum. Plaintiff built the extension and connection. Defendant commenced deliveries and then refused to continue. Defendant was insolvent and the extension was comparatively valueless unless the contract was performed. Sufficient oil to keep plaintiff's refineries in full operation could not be otherwise secured. A clear case for specific performance was thus established; however, this relief required a decree directing a series of continuous acts. The court, in discussing the question, said:

> "The contract sought to be enforced in this case runs for ten years only and involves no 'skill, personal labor, and cultivated judgment.' What it does require is easily ascertainable, and if carried out in good faith, ought not to give rise to any disputes requiring the interposition of the court. During the time it was complied with by appellee, no disputes arose, and there is no reason for anticipating any now if good faith will control the actions of both parties. That some differences may occur is true, but they are not likely to be of a nature requiring much consideration. No one will question for a moment the duty of a court of equity specifically to enforce a lease of ground for a term of ten years or even a term of 999 years because the lessee is bound by certain covenants such as paying rents, taxes, and assessments, keeping the buildings in repair or erecting buildings according to certain specifications, keeping the buildings insured and other conditions usually inserted in such contracts of lease, and which may give rise to as many or more disputes than the contract in the case at bar."

In Union Pacific Railway Company v. Chicago Railway Company,[146] where the contract sought to be enforced was for 999 years, Mr. Chief Justice Fuller, speaking for the court sustaining a decree for specific performance, said:

> "But it is objected that equity will not decree specific performance of a contract requiring continuous action involving skill, judgment and technical knowledge, nor enforce agreements to arbitrate and that this case occupies this attitude. We do not think so. The decree is complete in itself, is self-operating and self-executing, and the provision for a referee in certain contingencies is a mere matter of detail, and not of the essence of the contract. It must not be forgotten that in the increasing complexities of modern business

[146] (1895) 163 U. S. 564, 600, 41 L. Ed. 265, 16 Sup. Ct. Rep. 1173.

> relations equitable remedies have necessarily and steadily been expanded, and no inflexible rule has been permitted to circumscribe them. As has been well said, equity has contrived its remedies 'so that they shall correspond both to the primary right of the injured party, and to the wrong by which the right has been violated' and 'has always preserved the elements of flexibility and expansiveness, so that new ones may be invented, or old ones modified, in order to meet the requirements of every case, and to satisfy the needs of a progressive social condition in which new primary rights and duties are constantly arising and new kinds of wrong are constantly committed.' Pomeroy Eq. Jur., Par. III."

In American Smelting and Refining Company v. Bunker Hill and Sullivan Mining and Contracting Company,[147] plaintiff sought specific performance of a contract by which defendant agreed to sell certain ores to plaintiff for a term of twenty-five years and to operate its mines during the same period. The continuous act rule was urged by the defendant, and the court said:

> "As to the practicability of a court of equity enforcing the terms of the agreement, it would seem to be comparatively simple, at least as it pertains to the normal product. The agreement is for the sale and purchase of these ores. They consist of the product of the mines of the Mining Company. The only stipulation that would seem to present an obstacle to a court requiring performance is that the Mining Company shall 'operate its mines.' There is no provision respecting the manner of operation requiring any supervision of the courts as to details, but the simple agreement is that the Mining Company shall actively operate the mines. There seems to be no plausible reason why the court may not require a performance on the part of the Mining Company in this respect. The production of ores is, of course, a result of the active operation of the mines and these ores the Mining Company is required to sell and deliver to the Smelting Company. The relief is asked that the Mining Company, in pursuance of its undertaking, continue to deliver to the plaintiff. There are no delicate or complex conditions involved in their production or delivery, or in obtaining the stipulated price agreed upon to be paid for them; nothing apparent that will require supervisory control in requiring performance on the part of the Mining Company."

The same conclusion was reached in Great Lakes and St. Lawrence Transportation Company v. Scranton Coal Company.[148] Plaintiff in that case was a large shipper of coal on the Great

[147] (1918) 248 Fed. 172.
[148] (1917) 239 Fed. 603, 152 C. C. A. 437.

Lakes and had entered into an agreement with defendant, a shipowner, for the transportation by steamer of plaintiff's coal, for a period of three seasons. In a suit for specific performance the defendant relied upon the same principle, but the court in granting specific performance held:

> "Nor does the need of continuous supervision bar, however much it must deter, the court from exercising jurisdiction when the hands of justice seem to require it."[149]

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[149] It must be borne in mind the continuous acts doctrine is a matter of expediency and not a matter of jurisdiction. In Clark's recent work on Specific Performance, he states: "In some cases, however, courts are asked to decree specific performance of contracts where the act to be done by the defendant will take a long period of time, such as contracts to put up a building, contracts to repair, etc. Though there is language in some of the decisions to the effect that there is a lack of jurisdiction in such cases, the decisions themselves show that these cases do not differ in principle from those already discussed; jurisdiction exists if the defendant is within control of the court and will be exercised if the remedy at law is inadequate, and the inconveniences attending its exercise are not too great. It must be borne in mind that while the remedy of specific performance is no longer a matter of grace, but of right, yet on the other hand it is not automatically given like assumpsit or replevin, but is given only in the exercise of judicial discretion. If the court orders a defendant to do an act which will require a long period of time, such as the building of a house, the court must of course see that it is performed in order that the decree be not nugatory. This difficulty of supervision in case specific performance should be granted is weighed against the hardship of the plaintiff in case specific performance should be refused. If the hardship of the plaintiff would be very great the court would and should undertake a more difficult task of supervision than where the hardship of the plaintiff would be relatively slight. It is a matter often of expediency, of balancing of conveniences, to be decided upon all the circumstances of the particular case and incapable of being reduced in a rule."

The fallacy of applying the continuous doctrine rule as a jurisdictional test instead of as a matter of expediency is well brought out by the case of Fellows v. Los Angeles (1907) 151 Cal. 52, 60, 90 Pac. 137. An action was brought to enjoin the defendants from cutting off the water to plaintiff's premises and to compel them to furnish water to other premises of the plaintiff. The court said: "It is unnecessary to determine whether or not a mandatory injunction could be issued under the *equity* powers of the court, to compel the continuous operation of a pumping plant, or the establishing of a connection to the lot No. 18 which had not been previously connected. The superior court has full jurisdiction to give any relief warranted by the facts whether that relief be equitable, legal, or relief appropriate only in a special proceeding. It has such jurisdiction in this case, even if the relief asked is, in a certain sense, multifarious—as, for instance, in part by injunction and consequently equitable, and in part by mandate, and therefore authorized under a special proceeding in mandamus. The demurrer is upon the sole ground that the complaint does not state facts sufficient to constitute a cause of action. The facts are sufficient to justify relief by injunction as to one lot, with additional relief by writ of mandate as to the other, and the proper parties defendant are before the court for both kinds of relief. . . . . Therefore if a mandamus or iniunction, or both, would give complete relief, it is within the power of the court to give it in this action."

The court was asked to compel the performance of a continuous act. It was faced with the continuous acts rule but it avoided the difficulty by ingeniously distinguishing its powers in a special proceeding and in an equity matter If the case had been one for the specific performance of a contract to operate the pumping plant and establish the connection to the lot in question, would the remedy have been refused because of the rule of continuous

It is submitted that the same rule should be applied to the poultry contract. The seller is obligated to deliver eggs for one year and the buyer to buy them at the resale price. This does not involve "a continuous long series of acts of supervision requiring special knowledge and skill and repeated examinations and new directions." Obviously the delivery of eggs is not distinguishable from the delivery of oil, the sale of ore, or the carriage of coal.

Liquidated Damages

The produce sale agreement contains a liquidated damage clause.[150] It is well settled in California, however, that this is no bar to specific performance and a party may at his option recover liquidated damages or resort to equity for specific performance.[151]

NATURE OF THE PRODUCTS MARKETED

The poultry contract is one of the most detailed of the sales contracts used by co-operative marketing associations and most of the objections which may be raised to specific performance of other sales contract have been considered in the previous discussion.[152] All of the sales contracts have many elements in common but no two are absolutely alike. A discussion of some of their points of difference is essential to a proper consideration of the subject. Other important sales contracts are those of California Prune and Apricot Growers, Incorporated, California Associated Raisin Company, California Peach Growers and the

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acts? It is submitted that if the court can so frame a decree in a mandamus proceedings it can frame a like decree in an action for specific performance. The difficulty of proper supervision is the same in each instance.

[150] "Inasmuch as it is now and ever will be impracticable and extremely difficult to determine the actual damage resulting to the Buyer should the Seller fail to deliver to the Buyer all of the eggs and poultry herein agreed to be delivered, the Seller hereby agrees to pay to the Buyer seven cents for each dozen eggs and one dollar for each dozen commercial poultry sold, consigned, delivered or marketed by or for him and so undelivered to the Buyer, as liquidated damages for the breach of this contract in that regard, all parties agreeing that this contract is one of a series dependent for its true value upon the adherence of each and all of the contracting parties to each and all of the said contracts."

[151] Cal. Civ. Code, § 3389: "A contract otherwise proper to be specifically enforced, may thus be enforced, though a penalty is imposed, or the damages are liquidated for its breach and the party in default is willing to pay the same." Glock v. Howard (1898) 123 Cal. 1, 9, 55 Pac. 713, 69 Am. St. Rep. 17, 43 L. R. A. 199. The same rule applied before the adoption of the code. Bartholomew v. Hook (1863) 23 Cal. 277.

[152] 8 California Law Review, 384 ff.

member associations affiliated with the California Fruit Growers Exchange, an organization of growers of citrus fruits.[153]

In the poultry industry most of the sales provide for immediate delivery. In the dried fruit industry, on the other hand, practically all sales provide for future delivery. Therefore the associations which market dried fruit contract in advance to sell their members' produce, relying upon their contracts with the growers.

A true co-operative association handles only the products of its members.[154] If the grower fails to deliver, the association will be unable to perform its contracts with the trade. Such breaches of contract must ultimately result in dissolution of the organization. How much a single breach of a grower's contract contributes to this result cannot be ascertained, but some contribution there must be. The amount of damage cannot be fixed; the remedy at law is therefore inadequate.

The Lien Clause

Most of the sales contracts are personal agreements binding the producer as long as he raises a particular product. The raisin contract in addition contains a clause which imposes a lien on the land. It reads:

> "In consideration of the agreements on the part of the Buyer herein contained, the Seller agrees that this contract is made for the benefit of, and is beneficial to, the land herein described, and that the obligation of the Seller to deliver all of said raisins, or to pay damages for failure to so deliver, shall be and remain a lien upon said land for the full term of this contract and the extension thereof, and such lien may be enforced in the same manner as other liens upon real property regardless of the ownership of said land.
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> "This contract shall inure to the benefit of and bind the said land and the heirs, administrators, successors or assigns of the respective parties hereto."

It is difficult to see how such a clause would affect the remedy of specific performance, either in preventing the granting of a decree where it is otherwise proper, or in supplying the necessary

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[153] These associations are probably better known to the public under the trade names used by them for their fruit—"Sunsweet" prunes and apricots; "Sun Maid" raisins; "Blue Ribbon" peaches; and "Sunkist" oranges and lemons.

[154] The poultry contract, for example, contains the following clause: ". . . . the Buyer and the Seller expressly agree that the Buyer limits its purchases of eggs and poultry to producers co-operating with it under this form of contract and cannot go out into the open markets and buy eggs or poultry to replace any which the Seller may fail to deliver."

jurisdictional fact where the remedy is otherwise improper. It is not a covenant running with the land;[155] it is a lien enforceable only by foreclosure.[156] It does not involve such an interest in realty as warrants the interposition of a court of equity. The foreclosure of a lien secures only money damages; as we have seen, such damages do not afford a plain, speedy or adequate remedy at law.

PRICE

The poultry and citrus contracts provide for sales by the grower to the association at the resale prices. The raisin, peach, and prune contracts provide for sales at a fixed minimum price plus any increase secured upon resale by the association. The effect in each case, however, is very much the same.

COVENANTS OF THE ASSOCIATION

In the poultry contract the association agrees to resell at the best price obtainable under market conditions. In the prune, raisin, and peach contracts the associations agree to use their best efforts to resell the fruit at prices higher than those paid to the grower. Bearing upon the granting of specific performance, these contracts present a new question. Is an obligation by a co-operative association to use its best efforts to resell fruit an obligation to render personal service? We believe that a discussion of the question will lead to an answer in the negative.

Jolliffe v. Steele[157] involved a contract in which plaintiff granted defendant an exclusive option to purchase from or sell for her certain real estate. Defendant, on his part, agreed to do all in his power to dispose of the property. The court held that the promise of defendant was "at most an obligation to render personal service of an indefinite and uncertain character."

The holding of the court is clearly correct. Where a party agrees to do all in his power to sell specified real property, his peculiar ability is the essential feature of his covenant; he binds himself to use his talents to achieve a certain end and thus promises to perform a personal service. The services of the real estate broker are personal in their nature. He must find his prospects, follow them up and consummate the sale. His value to his client depends on his personal skill and ability in marketing.

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[155] A covenant running with the land must be contained in a grant of real property. Cal. Civ. Code, § 1460, (1) (2); Fresno Canal Co. v. Rowell (1899) 80 Cal. 114, 22 Pac. 53.

[156] Fresno Canal Co. v. Rowell, supra, n. 155.

[157] (1908) 9 Cal. App. 212, 98 Pac. 544.

On the other hand, whereas a co-operative association agrees to use its best efforts to resell produce, no peculiar ability is involved. The essential element which enters into the contract of the association is its marketing method, which is based upon a so-called pooling arrangement. All fruit delivered to the association is segregated into pools according to grade and quality. Each pool is sold at the best prices obtainable, depending upon current market conditions, and the proceeds are divided among the members in proportion to the amount of produce contributed to the pool. As soon as the grower's produce is pooled he has no further interest in the particular fruit which he has delivered. He is entitled to his definite proportion of the amount for which all of the fruit in the pool is sold, irrespective of fluctuations from time to time.

The value of the co-operative association marketing with such a pooling arrangement does not depend upon personal elements. The principle of increasing returns enables it to reduce overhead costs per unit.[158] The volume of business transacted permits it to make large expenditures for advertising, market service and house papers and to secure adequate credit at reasonable rates. Its pooling arrangement results in the standardization of pack and quality and the adoption and maintenance of trade brands and standards.[159]

When producers co-operate to sell their products, their purpose is to secure the benefits of co-operative marketing. When an individual employs a real estate broker to sell a particular piece of real estate, his purpose is to secure the benefit of personal skill and ability in marketing.

ARBITRATION

The prune contract provides for arbitration in case any dispute arises concerning the quality of the fruit.[160] It may be contended that this prevents specific performance since the code provides that an agreement to submit a controversy to arbitration cannot be specifically enforced.[161] Arbitration will not be spe-

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[158] Plehn, The State Market Commission of California, American Economic Review, Vol. VIII, p. 1.

[159] See "The Economic Basis," 8 California Law Review, 281 ff.

[160] "The buyer shall determine the grade and quality of all prunes delivered hereunder. If any dispute arise concerning the quality of the fruit tendered hereunder, it shall be settled by arbitration, Buyer and Seller each to select one arbitrator who shall jointly select a third; and the decision of a majority of said arbitrators shall be binding upon and be complied with by both parties hereto. . . . ."

[161] Cal. Civ. Code, § 3390, sub-div. 3.

cifically enforced in favor of either party, but this fact does not affect the equitable remedy as to the remainder of the contract.

Since specific performance of the arbitration clause is not available to either party, there is a mutual lack of remedy. This complies with equity's requirement of mutuality of remedy—both parties are limited to the same extent in the relief which they may obtain. Furthermore, the contingency that arbitration may be necessary is so remote that it places no obstacles in the way of specific performance.[162]

The foregoing constitute the important points of difference between the poultry contract and the sales agreements of the more important co-operative marketing associations in California. It will be seen that there is nothing in these features of the contracts to preclude equitable relief. We may therefore take it as a general principle that the contracts between California co-operative marketing associations operating on a sale and resale plan and their grower members may be specifically enforced. We may now consider a different form of contract—the agency contract.

The Agency Agreement[163]

As we have previously stated, some of the California co-operative associations do not purchase their members' produce outright. They agree to market his crops as his agent. Typifying this form of agreement is the marketing agreement of Fruit Growers of California, Incorporated, a non-profit, co-operative agricultural association without capital stock, composed of growers of fruit which is sold fresh instead of dried.[164]

By the fruit growers' contract, the grower

> "appoints the Association his sole and exclusive agent, and also as his attorney in fact, for the purposes hereinafter set forth, with full power and authority, in its own name, in the name of the Grower or otherwise, to transact such business and take such action as may be necessary, incidental or convenient for the accomplishment thereof, coupling such appoint-

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[162] American Smelting and Refining Co. v. Bunker Hill etc. Co. (1918) 247 Fed. 172, 184.

[163] Among the associations using the agency form of contract are the following: Alfalfa Growers of California, Inc.; California Almond Growers' Exchange; California Bean Growers' Association; Central California Berry Growers' Association; Fruit Growers of California, Inc.; California Honey Producers' Co-operative Exchange; Milk Producers' Association of Central California; California Pear Growers' Association; California Walnut Growers' Association.

[164] The California Prune and Apricot Growers, Inc., the California Associated Raisin Company, and the California Peach Growers market dried fruit exclusively.

ment with a direct financial interest as the common agent and attorney of all Growers hereunder and without power of revocation for the full term hereof;"

The association agrees to endeavor to market the fruit as agent of the grower and ratably to divide the proceeds of sale of products of like variety and grade from the same district among the growers in proportion to their deliveries. The grower, on his part, agrees to consign and deliver his fruit to the association as his agent in accordance with its directions. Due to this agency feature the contract presents a clearer case of inadequacy of the legal remedy than the sales contract. The court is not confronted with the principle that the measure of damages is the difference between market price and contract price. There is no conceivable rule for fixing damages if the grower fails to deliver to a co-operative association which acts as his agent. All of the other features of inadequacy of legal remedy of the co-operative contract which we have already mentioned are present in the agency contract.

In Owen County Burley Tobacco Society v. Brumbach,[165] a member of a co-operative pool of tobacco growers sought to break his contract and dispose of his crop outside of the pool. The asscіation sued for an injunction to restrain him from disposing of his crop other than in accordance with the contract. The court said:

"The Society could not obtain proper or adequate relief in an action at law for damages or indeed in any other way than by restraining defendant from disposing of the property he had pledged. Having agreed with the Society and the other members thereof to surrender the control and disposition of the tobacco to it, it would be a breach of contract on his part to afterwards, without the consent of the Society, sell or otherwise dispose of it. The injury to the Society could not be measured in dollars and cents. Organized for the mutual protection and advantage of each of its members, receiving no gain, and making no profit from the transaction, it would be wholly impracticable to estimate what damage it would sustain if the members should dispose of their crops. The life and usefulness of the Society depends entirely upon the fidelity of the members in observing the agreement, and the failure to comply with it would necessarily work a dissolution of the Society, and consequently have the effect of depriving the members of the benefits and advantages they might expect to derive from its existence. . . . .

[165] (1908) 128 Ky. 137, 107 S. W. 710.

> "There has been a breach of contract and an injury, but the damages caused by the breach complained of are not in their nature susceptible of proof or estimation."

Generally, a contract of agency cannot be specifically enforced because it involves personal service. But this contract has two important elements that differentiate it from ordinary agency contracts—first, the agent is a corporation, and incapable of being subjected to involuntary servitude; and second, the contract is part of a co-operative pooling plan.

It has been demonstrated that the principle underlying equity's refusal to grant specific performance in contracts involving personal service is that which underlies the Thirteenth Amendment; and it has been pointed out that the objection of involuntary servitude ceases to apply when the obligor is a corporation.[166] Cases in which equity may not render a decree must not be confused with those in which equity may render a decree but cannot enforce it. Contracts for personal service are included in the latter group.[167] It is submitted that it is within the power of equity to compel a corporation to perform services which, if required of a natural person, would amount to involuntary servitude; that a contract involving "personal service" can be specifically enforced if the obligor is a corporation.

The importance of the co-operative marketing method has already been emphasized.[168] The grower is interested not in personal skill and ability in marketing, but in securing the benefits of co-operative marketing. It is the reduction of costs, the benefits of concerted action, the collective credits that the grower primarily seeks—not peculiar skill in marketing.

Some of the agency contracts[169] are relatively brief, incorporating by reference provisions of the by-laws of the association relating to the marketing of the products—the by-laws in effect containing the marketing agreement.

A by-law of a corporation may be enforced against stockholders or members as a contract.[170] Specific performance of a

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[166] 8 California Law Review, 398.

[167] Pomeroy's Equitable Remedies (2d ed.) Par. 757.

[168] 8 California Law Review, 283.

[169] California Almond Growers' Exchange, Milk Producers' Association of Central California.

[170] Peoples Home Savings Bank v. Sadler (1905) 1 Cal. App. 189, 81 Pac. 1029; Robinson v. Templar Lodge No. 17 (1897) 117 Cal. 370, 49 Pac. 170; O'Connor v. Grand Lodge A. O. U. W. (1905) 146 Cal. 484, 80 Pac. 688; Bowie v. Grand Lodge L. W. (1893) 99 Cal. 392, 34 Pac. 103; Clarke, California Corporations, 151; 1 Thompson on Corporations (2d ed.) §§ 980, 1054; 14 C. J. 346.

by-law is very unusual, but it has been granted,[171] and there would seem to be no objection on principle to such a remedy. The main objection would seem to be that the contract cannot bind the grower to future amendments of the by-laws. But the California Supreme Court has said:[172]

> "Parties may contract in reference to laws of future enactment—may agree to be bound and affected by them as they would be bound if such laws were existing. They may consent that such laws may enter into and form part of their contracts, modifying and varying them. It is their voluntary agreement which relieves the application of such laws to their contracts and transactions from all imputations of injustice."

It thus appears that certain features of the agency contracts present obstacles to specific performance which do not exist in the sales contracts, while other features of the agency contracts would impel the court to grant the remedy. We believe, however, that courts of last resort will unhesitatingly hold that the sales contracts are capable of specific enforcement, whereas the agency contracts present a more difficult problem.

In this article, we have attempted to consider in detail the marketing contracts of California co-operatives in connection with the legal problems which they present. It is interesting to note that despite the manifest importance of contracts of this character, no reviewing court has ever definitely determined the legal problems herein discussed.

In view of the widespread development of a movement toward co-operative marketing by farmers—a movement which has become so powerful that the Congress of the United States and many of the state legislatures have placed in the statute books laws which definitely recognize the desirability and economic value of such associations—we believe that within a comparatively short period these questions will require the earnest consideration of both lawyer and layman. In the hope of shedding some light on the subject, this paper has been presented.

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[171] New England Trust Co. v. Abbott (1894) 162 Mass. 148, 27 L. R. A. 271.
[172] Bowie v. Grand Lodge L. W., 99 Cal. 392, 395, 34 Pac. 103.